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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,075	08/01/2003	Ken Gardner	PGARDK-S	4241

7590 10/07/2004

Thompson E. Fehr
Suite 300
Goldenwest Corporate Center
5025 Adams Avenue
Ogden, UT 84403

EXAMINER

BAXTER, GWENDOLYN WRENN

ART UNIT PAPER NUMBER

3632

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,075

Applicant(s)

GARDNER, KEN

Examiner

Gwendolyn Baxter

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[Handwritten signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☒ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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This is the first Office Action for application serial number 10/633,075, filed August 1, 2003.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 25. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 35 is objected to because of the following informalities: This claim is said to depend on claim 36, which is incorrect. For the purpose of this office action, this claim is set to depend upon 34. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, line 16, "an axis" should read -the axis-. A similar problem occurs in claims 12, 13, 14, and 25.

In claim 5, lines 2 and 4, "the attachment" lacks proper antecedent basis. A similar problem occurs in claims 8, 11, 16, 19, 22-24, 26, 29, 32, 38, and 41.

In claim 6, lines 3 and 5, "the extension" lacks proper antecedent basis. A similar problem occurs in claim 7, 9, 10, 18, 20, 21, 27, 28, 30, 31, 37, 39, 40, 44 and 46.

In claim 13, lines 7 and 10, recites "rigid spring rod". It is unclear as to how a spring rod is rigid when by inherently a spring is resilient. Please clarify. A similar problem occurs in claims 11, 41 and 45.

Regarding claim 14, the preamble recites an intended use for a survey rod; however, line 2 recites a positive limitation of the survey rod. Consequently, it appears applicant intend

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to claim a combination. Therefore, the language “A support for a survey rod” should read –A support in combination with a survey rod- to reflect this intention. A similar problem occurs in claims 25, and 42-47.

Claim 17 recites “the first end of said first leg has a bevel that rotates toward and eventually against said grip as said first leg is extended, thereby limiting the extension of said first leg” and “the first end of said second leg has a bevel that rotates toward and eventually against said grip as said second leg is extended, thereby limiting the extension of said second leg”, which is found at lines 2-6. This recitation is a double inclusion of “the first end of said first leg has a bevel that rotates toward and eventually against said grip as said first leg is extended, thereby limiting the extension of said first leg” and “the first end of said second leg has a bevel that rotates toward and eventually against said grip as said second leg is extended, thereby limiting the extension of said second leg”, which is found at claim 12. The inclusion of the same element twice makes the claim indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,662,296 to Wu. The present invention reads on Wu as follows: Wu teaches a support comprising a grip (20), and first and second legs (30). The first and second legs are rotatably

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attached to the grip. Additionally, the support comprises a means for slidably mounting the grip (203); a means for extending and retracting the first and second legs (60); a means for mounting the extending and retracting means (the tab portion extending from the connector joined to both 30 and 60) and a means for fastening the means for mounting the extending and retracting means (the connector joined to both 30 and 60).

Allowable Subject Matter

Claims 3-47 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claim 2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach the collar having an aperture and a releasable fastener or a means for mounting said extending and retracting means is releasable in combination with the other elements recited which is not found in the prior art of record. Alternatively, the prior art of record fails to teach the support in combination with the survey rod.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yim 4,620,682; Suk 5,823,489; and Tang 6,007,031 teach retractable and extendable support and Vargas teaches a survey tripod.

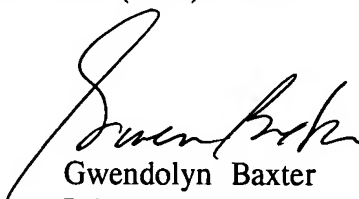
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702.

The examiner can normally be reached on Monday-Wednesday, 8:00am -5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter
Primary Examiner
Art Unit 3632

September 30, 2004